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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In Re: Case No. 10-13509

Frazier Winery LLC Chapter 11  
IDN 68-0258539

Debtor.

**STIPULATION FOR USE OF CASH COLLATERAL  
GRANT OF ADEQUATE PROTECTION LIENS  
ORDER THEREON**

This Stipulation is made on the date indicated below, by and between Debtor and Debtor-in-Possession, Frazier Winery LLC ("Debtor"), and secured creditor It's a Jungle Out There, Inc. ("Jungle"). This Stipulation is based on the following facts:

A. Jungle contends that on or about September 10, 2008 Debtor through Willard Frazier, dba Frazier Winery, made, executed and delivered to Jungle a written Commercial Security Agreement, and related documents (the "Security Agreement"). Pursuant to the Security Agreement, Jungle agreed to provide Debtor with a loan in the amount of \$325,000.00, and Debtor granted Jungle a security interest and Lien in all of DEBTOR'S RIGHT, TITLE AND INTEREST IN ALL VINTAGES OF FRAZIER CASE GOODS DISPOSITION OF ANY OF THE COLLATERAL DESCRIBED HEREIN, ALL PROCEEDS (INCLUDING INSURANCE PROCEEDS) FROM THE SALE, DESTRUCTION, LOSS, OR OTHER DISPOSITION OF ANY OF THE COLLATERAL DESCRIBED HEREIN, AND SUMS DUE FROM A THIRD PARTY WHO HAS DAMAGED OR DESTROYED THE COLLATERAL DESCRIBED

1 HEREIN OR FROM THAT PARTY'S INSURER, WHETHER DUE TO JUDGMENT."  
2 collectively, the "Collateral").

3 B. Jungle asserts it perfected its security interest in its Collateral by taking an  
4 assignment of Bank of Alameda's UCC-1 Financing Statements that had previously been filed  
5 with the California Secretary of State after paying Bank of Alameda the \$325,000.00 balance of  
6 the Loan and by filing its own UCC-1 Financing Statements.

7 C. On September 10, 2010, Debtor filed with the Court a Voluntary Petition  
8 ("Petition") seeking relief under Chapter 11 of the Bankruptcy Code in the above captioned  
9 Court.

10 D. No trustee has been appointed in the case, and Debtor remains as Debtor-In-  
11 Possession.

12 E. Jungle asserts that as of the date of the Petition the Debtor was indebted to Jungle  
13 under the Security Agreement in an aggregate (principal, interest and fees) of at least \$490,000.00  
14 (the "Indebtedness"). The Indebtedness together with all of the other obligations under the  
15 Security Agreement is referred to as the "Pre-Petition Debt."

16 F. All cash and cash equivalents received by the Debtor in the operation of its  
17 business, whether before or after the filing of the Petition, received by Debtor from the  
18 disposition of any of the Collateral existing on the date of the Petition and subject to the perfected  
19 lien and security interest claimed by Jungle to have been created by the Security Agreement  
20 constitute cash collateral as defined in 11 USC § 363 ("Cash Collateral").

21 G. Pursuant to 11 USC § 363, Debtor is prohibited from using, selling or leasing  
22 estate property outside the ordinary course and from using Cash Collateral absent the consent of  
23 the secured creditors holding a lien thereon or authorization of the Bankruptcy Court following  
24 notice and hearing.

25 H. Pursuant to 11 USC § 363 (c) (4) the Debtor is required to segregate and account  
26 for all Cash Collateral in its possession, custody or control.

27 I. Debtor and Jungle wish to permit Debtor to use some of the Cash Collateral  
28 pursuant to the limitations of the Bankruptcy Code and the terms and conditions of this

1 Stipulation. Debtor and Jungle agree that entry of an order approving this Stipulation is in the  
2 best interest of the Debtor's estate.

3 NOW, THEREFORE, THE PARTIES HEREBY STIPULATE AS FOLLOWS AND  
4 REQUEST THE COURT TO ENTER THIS STIPULATION AS AN ORDER:

5 Conditions Precedent. The effectiveness of this Stipulation is subject to the satisfaction of  
6 each of the following conditions precedent: (a) the Debtor shall have executed and delivered this  
7 Stipulation to Jungle; and (b) the Court shall have entered its order approving this Stipulation.

8 Terms and Conditions. The Debtor is authorized to use the Cash Collateral to and  
9 including January 1, 2011 (or such later date as Debtor and Jungle agree to in writing) upon the  
10 following terms and conditions.

11 a. The Debtor shall (i) provide Jungle with weekly reports of cash receipts and  
12 disbursements, accounts receivable, inventory and cash in the debtor in possession account at  
13 Bank of America and in all other accounts, (ii) allow Jungle reasonable inspection of the business  
14 premises, its books and records, the Collateral and the Cash Collateral, (iii) furnish Jungle copies  
15 of each operating statement and other financial information that Debtor files with the Bankruptcy  
16 Court and/or submits to the U.S. Trustee, and such additional information regarding the business  
17 affairs, financial condition and the Collateral of the Debtor that Jungle may reasonably from time  
18 to time request. (The reports described above shall be provided to Jungle promptly, but in no  
19 event later than one week after Jungle's written request.)

20 b. The Debtor shall maintain property and liability insurance coverage on the  
21 Collateral in such amounts as Jungle may reasonably require, and keep such existing insurance  
22 policies current and in effect at all times, naming Jungle as loss payee as necessary to compensate  
23 Jungle for the loss of any Collateral. Within 10 days of the date of this Stipulation and Order,  
24 Debtor shall provide copies of all such insurance policies (including all endorsements,  
25 declarations, and amendments) to Jungle;

26 c. Debtor shall immediately give written notice to Jungle of (i) any Termination  
27 Event (defined below), (ii) the occurrence of any event, which, upon the giving of notice or  
28 passage of time, or both, would constitute a Termination Event, and (iii) any matter which has

1 resulted, or might result, in a material adverse change in the Collateral, financial condition or  
2 results of the operations or business of Debtor;

3 d. As partial adequate protection for any diminution in the value of the Collateral  
4 resulting from (i) the use of Cash Collateral (including without limitation the transfer of Cash  
5 Collateral from the Wells Fargo Accounts to the Debtor in Possession Account at Bank of  
6 America), (ii) the use, sale or lease of the Collateral (other than the Cash Collateral), Jungle shall  
7 receive a valid and perfected replacement security interest in, and replacement lien upon, all  
8 Debtor's post-petition assets, however acquired, (other than avoidance actions) which lien shall  
9 have the same extent and priority as Jungle's pre-petition liens. To the extent that this  
10 replacement lien proves to be inadequate to replace Cash Collateral expended, Jungle shall be  
11 granted a superpriority claim under 11 U.S.C. § 507(b) to the extent of any shortfall of Collateral  
12 (without modification to the priorities set forth in the Bankruptcy Code section 726(b) in the  
13 event of a conversion to Chapter 7). The replacement lien granted pursuant to this Stipulation  
14 shall constitute a valid and duly perfected security interest and lien upon the execution of the  
15 order approving this Stipulation by the Bankruptcy Court ("Order"). Jungle shall not be required  
16 to file or serve financing statements, notices of lien, or similar instruments which otherwise may  
17 be required under federal or state law in any jurisdiction, or take any action, including taking  
18 possession, to validate and perfect such security interest and liens. The Order of the Bankruptcy  
19 Court approving this Stipulation shall be deemed sufficient and conclusive evidence of the  
20 security interests, liens and the replacement liens granted hereunder and the perfection thereof.  
21 The said super priority claim given to Jungle is limited to losses suffered by Jungle from the  
22 debtor's post-petition use or sale of Jungle's cash collateral and shall attach to all of the debtor's  
23 assets, including any recovery from avoidance actions.

24 e. Debtor shall provide to Jungle and its agents access to all vintages and varieties of  
25 Debtor's case goods and bulk wine inventory so that a physical inventory may be taken.  
26 Additionally, Debtor shall voluntarily provide to Jungle copies of its sales and inventory reports  
27 pertaining to its wine inventory for the period of June 2008 to the present.  
28

1 f. Debtor shall provide to Jungle new budgets not less than ten (10) days before the  
2 end of each month detailing its request for use of cash collateral for the following thirty-day  
3 period.

4 Termination Events. Each of the following is a “Termination Event”:

5 a. Breach of Covenant. Debtor (i) defaults in the performance or observance of any  
6 term, covenant or agreement contained in this Stipulation, or (ii) commits any post-petition  
7 material breach of the provisions of the Security Agreement (except to the extent that such  
8 provisions are inconsistent with either the Bankruptcy Code or this Order), provided that such  
9 default is not existing prior to the date of this Stipulation.

10 b. Conversion. Debtor’s Chapter 11 case is converted to a case under Chapter 7 of  
11 the Bankruptcy Code.

12 c. Dismissal. Debtor’s Chapter 11 case is dismissed.

13 d. Diversion From Expense Budget. Without the consent of Jungle or an order of the  
14 Bankruptcy Court, Debtor uses Cash Collateral other than in accordance with the Expense  
15 Budget; provided, however that a diversion from the Expense Budget of no more than 10% on an  
16 individual Expense Budget line item shall not be a Termination Event so long as Debtor does not  
17 exceed the total Expense Budget by more than 10% during any given period.

18 e. Collateral Controls. Debtor fails to adequately maintain, control and account for  
19 the Collateral or the Cash Collateral.

20 f. Sale of Assets. The Debtor sells or transfers any of its inventory outside of the  
21 ordinary course of business.

22 g. Cessation Of Business. Debtor ceases to do business.

23 h. A trustee is appointed.

24 i. Debtor, or any other person or entity attempts to attack the nature, extent, validity  
25 and/or priority of Jungle’s lien, provided, however, Debtor specifically reserves its right to seek  
26 an order authorizing use of cash collateral in the event of such a challenge to Jungle’s lien.

27 Termination of Debtor’s Right to Use Cash Collateral  
28

1           a.       In the event of a Termination Event, Debtor's right to use Cash Collateral shall  
2 immediately terminate, and the Debtor shall not use Cash Collateral thereafter without further  
3 written consent of Jungle or an Order of the Bankruptcy Court; provided, however, that the  
4 Debtor's right to use Cash Collateral shall terminate only after Jungle provides three calendar  
5 days written notice to Debtor and its counsel, and provided further that no order allowing the  
6 Debtor's use of Cash Collateral is entered by the Bankruptcy Court during such three day period.

7           b.       Upon termination of Debtor's right to use Cash Collateral, Jungle shall be entitled  
8 to apply to the Bankruptcy Court for relief from the automatic stay so that it may enforce its  
9 rights under the Security Agreement and this Order resulting from this Stipulation. Debtor agrees  
10 that a final hearing or such motion may be held on as little as five days notice to it. As set forth  
11 herein below, nothing contained in this paragraph shall prevent Jungle from otherwise seeking  
12 relief from the automatic stay.

13           Debtor's Representations, Warranties and Covenants. The Debtor hereby makes the  
14 following representations, warranties and covenants to Jungle.

15           a.       Debtor shall not under any circumstances fail to perform (or resist enforcement of)  
16 any of its obligations to Jungle in connection with this Stipulation or the Security Agreement  
17 because of any alleged outstanding claim or cause of action against Jungle which has not resulted  
18 in a final judgment of a court of competent jurisdiction (sustained on appeal, if any) against  
19 Jungle.

20           b.       Time is of the essence of every provision of this Stipulation.

21           c.       The descriptive headings that are used in this Stipulation are for convenience only  
22 and shall not affect the meaning of any provision of this Stipulation.

23           d.       This Stipulation and the Security Agreement contain or incorporate the entire  
24 understanding of the parties hereto with respect to the matters discussed herein. This Stipulation  
25 may not be modified or amended in any respect except by a written instrument executed by  
26 Jungle and Debtor. Debtor acknowledges and agrees that no employee or agent of Jungle shall  
27 have any actual or apparent authority to bind Jungle to any amendment except as provided herein,  
28

1 and Debtor shall not be entitled to rely upon or assert any purported, implied or oral amendment  
2 or modification.

3 e. No failure to exercise and no delay in exercising any right, power or privilege  
4 hereunder on the part of Jungle shall operate as a waiver thereof, nor shall any single or partial  
5 exercise of any right, power or privilege hereunder preclude any other or further exercise thereof  
6 or the exercise of any other right, power or privilege. No waiver shall affect any default  
7 Termination Event other than the default or Termination Event specified in the waiver, and such  
8 waiver shall be operative only for the time and to the extent stated. Waivers of any covenant,  
9 term or condition contained herein shall be effective only if they are contained in a written notice,  
10 and no waiver shall be construed as a waiver of any subsequent breach of the same covenant,  
11 term or condition.

12 f. This Stipulation shall inure to the benefit of and bind both Jungle's and Debtor's  
13 successors and assigns, including any trustee appointed in the Chapter 11 case or appointed upon  
14 conversion of this case to a case under Chapter 7 of the Bankruptcy Code.

15 g. Jungle shall have the right to inspect the Collateral and Cash Collateral during  
16 regular business hours and at any location with seventy-two (72) hours notice to Debtor.

17 h. Debtor shall not transfer any assets out of the ordinary course of business without  
18 approval of the Bankruptcy Court after notice and opportunity for hearing.

19 Automatic Termination. The Debtor's authority to use Cash Collateral pursuant to this  
20 Stipulation shall terminate on January 1, 2011. The Debtor shall not use Cash Collateral  
21 thereafter absent further order of this Court.

22 Survival Of Effects Of This Order. The provisions of this Stipulation and any actions  
23 taken pursuant hereto shall survive entry of any order which may be entered (A) converting this  
24 case to a Chapter 7 case; and (B) dismissal of this case. If an order dismissing this case under the  
25 provisions of 11 U.S.C. § 1112 or otherwise is at any time entered, such order shall provide (in  
26 accordance with sections 105 and 349 of the Bankruptcy Code) that (i) the superpriority claims,  
27 liens, replacement liens and security interests granted to Jungle pursuant to this Stipulation shall  
28 continue in full force and effect and shall maintain their priorities as provided in this Stipulation

1 until all obligations in respect thereof shall have been paid and satisfied in full (and that such  
2 superpriority claims, liens and security interests shall, notwithstanding such dismissal, remain  
3 binding on all parties in interest) and (ii) this Court shall retain jurisdiction, notwithstanding such  
4 dismissal for the purposes of enforcing the claims, liens, security interests, and replacement liens  
5 referred to above. The terms and provisions of this Stipulation as well as the superpriority claims,  
6 liens, security interests and replacement liens granted pursuant to this Stipulation shall continue in  
7 full force and effect notwithstanding the entry of an order of the type described in clauses (A) or  
8 (B) of this paragraph.

9 Jungle's and Debtor's Further Rights. Without limiting the generality of the foregoing,  
10 this Stipulation is without prejudice to Jungle's rights under (and subject to) the Bankruptcy Code  
11 and applicable non-bankruptcy law, including but not limited to, Jungle's right to (a) request  
12 additional adequate protection of its interest in the Collateral and Cash Collateral; (b) request  
13 relief from the automatic stay under 11 U.S.C. § 362; (c) request a conversion of Debtor's  
14 Chapter 11 case to a case under Chapter 7 of the Bankruptcy Code; (d) request dismissal of  
15 Debtor's Chapter 11 case; (e) request the appointment of a trustee or examiner; or (e) seek from  
16 the Bankruptcy Court any other relief whatsoever. This Stipulation is also without prejudice to  
17 the Debtor's rights to request additional authorization from the Bankruptcy Court to use Jungle's  
18 Cash Collateral at any future time in the absence of Jungle's consent in the event of a subsequent  
19 default or expiration of this Stipulation, and without prejudice to Jungle's rights to seek an order  
20 from the Bankruptcy Court terminating the Debtor's right to use Cash Collateral at any future  
21 time.

22 Retained Jurisdiction. The Bankruptcy Court shall retain jurisdiction to interpret and  
23 enforce this Stipulation and Order thereon, and make such other and further orders concerning  
24 Debtor's continued use of Cash Collateral as it deems warranted. If either party fails to comply  
25 with any of the terms and provisions of this Stipulation or Order thereon, or if any dispute arises  
26 between the parties concerning the interpretation or enforcement of this Stipulation or Order  
27 thereon, the matter or issue in dispute may be placed upon the Court's calendar on shortened  
28 notice for determination and adjudication by the Court.



1        The Official Unsecured Creditors Committee. (1) The right of the estate and the Official  
2 Committee of Unsecured Creditors (the "Committee") to challenge the extent, validity and  
3 amounts of Jungle's claims and liens is preserved. (2) The Debtor shall provide to the Committee  
4 the same financial information that the Dbtor provides to Jungle pursuant to the Second  
5 Stipulation, and shall allow the Committee reasonable inspection of the Debtor's business  
6 premises, books and records and Cash Collateral.

7 DATED: October 11, 2010

Frazier Winery LLC

8  
9 By /s/ Williard Frazier  
10 Willard Frazier  
Its Managing Member

11 Dated: October 11, 2010

It's A Jungle Out There

12  
13 By /s/ Robert Hower  
Robert Hower  
14 Its

1 Approved as to form

2 Dated: October 13, 2010

3 /s/ Michael C. Fallon  
4 Michael C. Fallon  
Attorney for Debtor

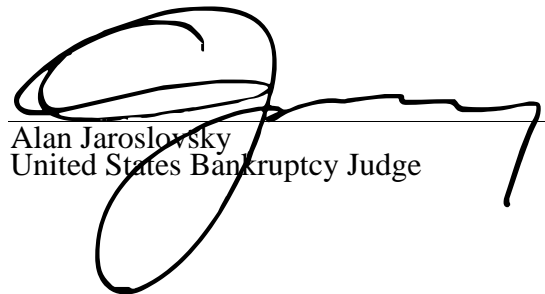
5 Dated: October 11, 2010

Buchalter Nemer, A Professional Corporation  
Attorneys for It's a Jungle Out There

7 By /s/ Peter Bertrand  
8 Peter Bertrand

11 IT IS SO ORDERED.

13 Dated: October 25, 2010

14   
15 Alan Jaroslovsky  
16 United States Bankruptcy Judge